

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

ELMER J. BUCKARDT, et. al.,

Defendants.

CASE NO. C19-00052 RAJ

**ORDER DENYING
DEFENDANTS' MOTION TO
DISMISS**

I. INTRODUCTION

This matter comes before the Court on Defendants' Motion to Dismiss (Dkt. # 12). For the reasons that follow, the Court **DENIES** Defendants' Motion.

II. BACKGROUND

The following is taken from the Government's Complaint, which is assumed to be true for the purposes of this motion to dismiss, as well as other documents that have been judicially noticed as noted below. *Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir. 2007). The parties in this action appear to have a lengthy history, beginning as early as 2000, when the Government began assessing tax liabilities against Defendant Elmer Buckardt ("Mr. Buckardt") for unpaid federal income taxes. Dkt. # 18 at 4. In 2002, Mr. Buckardt filed a petition in Tax Court contesting the IRS' notice of deficiency for income tax year

1 2002. Dkt. # 18-2, Ex. 16.¹ The Tax Court subsequently found Mr. Buckardt liable for a
2 deficiency in federal income taxes and penalties and cautioned him against advancing
3 frivolous and groundless arguments. Dkt. # 18-2, Ex. 21. And so it continued. Over the
4 next several years, the Government continued to assess tax liabilities against Mr.
5 Buckardt and Mr. Buckardt continued to file petitions contesting the IRS' notices of
6 deficiency. *See* Dkt. # 18-2, Exs. 16, 19-21, 24.

7 Most recently, on October 10, 2017, Mr. Buckardt filed another petition in Tax
8 Court alleging that he never received notices of deficiency or notices of determination for
9 tax years 2000-2015. Dkt. # 18-1, Ex. C. In response, the IRS moved to dismiss Mr.
10 Buckardt's petition for lack of jurisdiction. Dkt. # 12-1 at 6. The Tax Court granted the
11 motion to dismiss, noting that the IRS had not issued a notice of deficiency or notice of
12 determination for tax years 2000-2015, within the timeframe sufficient to confer
13 jurisdiction. Dkt. # 12-1 at 2.

14 On January 11, 2019, the Government filed a Complaint against Elmer Buckardt,
15 Karen Buckardt, the D'Skell Agape Society, and Snohomish County, asking the Court to:
16 (1) reduce the outstanding tax assessments against Mr. Buckardt to judgments, (2) set
17 aside transfers of two of the Buckardt's properties to the D'Skell Agape Society, (3)

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20 ¹ The Government submits several documents in support of its Opposition. *See* Dkt. #
21 18-1, 18-2. A court typically cannot consider evidence beyond the four corners of the
22 complaint, without converting the motion to a motion for summary judgment. *Lee v. City*
23 *of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). However, the Court may take judicial
24 notice, sua sponte, of a "fact not subject to reasonable dispute" at any stage of the
25 proceeding. This includes undisputed matters of public record, including court filings
26 and authentic documents recorded with a governmental agency. *Lee* at 689; *Hughes v.*
27 *United States*, 953 F.2d 531, 535, 540 (9th Cir. 1992) ("[O]fficial documents-such as IRS
forms-are probative evidence in and of themselves and, in the absence of contrary
evidence, are sufficient to establish that notices and assessments were properly made.").
Because the documents submitted by the Government are all court filings or self-
authenticating government records, the Court will take judicial notice of the
Government's Exhibits. *See* Dkt. # 18-1, 18-2.

1 foreclose federal tax liens on the properties, and (4) sell the properties. Dkt. # 1.

2 Defendants Elmer Buckardt, Karen Buckardt, and the D'Skell Agape Society
3 (collectively the "Defendants") subsequently moved to dismiss this action for lack of
4 subject-matter jurisdiction. Dkt. # 12. The Government opposes the Motion. Dkt. # 18.

5 **III. LEGAL STANDARD**

6 Federal courts are tribunals of limited jurisdiction and may only hear cases
7 authorized by the Constitution or a statutory grant. *Kokkonen v. Guardian Life Ins. Co.*
8 *of America*, 511 U.S. 375, 377 (1994). The burden of establishing subject-matter
9 jurisdiction rests upon the party seeking to invoke federal jurisdiction. *Id.* Once it is
10 determined that a federal court lacks subject-matter jurisdiction, the court has no choice
11 but to dismiss the suit. *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006); Fed. R. Civ.
12 P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction,
13 the court must dismiss the action.").

14 **IV. DISCUSSION**

15 Defendants appear to assert three arguments in support of their two-page Motion
16 to Dismiss: (1) the Court lacks subject matter jurisdiction over this action, (2) the IRS
17 cannot assert any liens or levies against Defendants because the Tax Court previously
18 concluded that no statutory notices of deficiency or determination were filed against
19 Defendants, and (3) 26 U.S.C. §7608(a) deprives the Court of jurisdiction.

20 **A. The Court Has Subject Matter Jurisdiction Over This Action**

21 Defendants argue that the Court lacks jurisdiction over this matter because a Tax
22 Court decision dismissing Defendant Elmer Buckardt's petition for lack of jurisdiction
23 applies in this action and precludes the Court from exercising jurisdiction. Dkt. # 12 at 2.
24 This argument is misplaced.

25 Original jurisdiction may be based on diversity or the existence of a federal
26 question, as set forth in 28 U.S.C. §§ 1331 and 1332. The Government alleges that the
27 jurisdictional basis for this lawsuit is federal question jurisdiction. Dkt. # 18 at 11.

1 Pursuant to 28 U.S.C. § 1331, federal district courts have original jurisdiction over “all
2 civil actions arising under the Constitution, laws, or treaties of the United States.” “A
3 case ‘arises under’ federal law either where federal law creates the cause of action or
4 ‘where the vindication of a right under state law necessarily turn[s] on some construction
5 of federal law.’ ” *Republican Party of Guam v. Gutierrez*, 277 F.3d 1086, 1088-89 (9th
6 Cir. 2002) (quotation omitted).

7 The Government points to four federal statutes which, it argues, confer jurisdiction
8 over this action: 28 U.S.C. §§ 1340 and 1345, and 26 U.S.C. §§ 7402 and 7403. Dkt. #
9 18 at 11. The Court agrees. First, the Government’s Complaint asserts claims based on
10 Mr. Buckardt’s unpaid federal income tax assessments and penalties. Dkt. # 1. Under 28
11 U.S.C. § 1340, federal courts have “original jurisdiction of any civil action arising under
12 any Act of Congress providing for internal revenue.” Similarly, federal courts have
13 original jurisdiction over “all civil actions, suits or proceedings commenced by the
14 United States.” 28 U.S.C. § 1345. Here, Plaintiff is the United States Government,
15 accordingly, the Court has jurisdiction under 28 U.S.C. § 1345.

16 In addition, 26 U.S.C. § 7402 grants federal district courts “jurisdiction to make
17 and issue in civil actions ... such other orders and processes, and to render such
18 judgments and decrees as may be necessary or appropriate for the enforcement of the
19 internal revenue laws.” The Government in this case is seeking to reduce tax
20 assessments against Defendants to judgment and, as a result, jurisdiction under 26 U.S.C.
21 § 7402 is proper. Finally, 26 U.S.C. § 7403 provides that the United States may file an
22 action in district court to enforce a tax lien against any property in which the taxpayer has
23 an interest. *See* 28 U.S.C. § 7403(a). Because the Government is seeking to enforce tax
24 liens by foreclosing on properties in which Defendants have an interest, the Court has
25 jurisdiction under 26 U.S.C. § 7403. In sum, there are multiple federal statutes
26 conferring subject matter jurisdiction over this action and Defendants’ arguments to the
27 contrary are completely without merit. *United States v. Kollman*, 774 F.3d 592, 594 (9th

1 Cir. 2014) (noting district court had jurisdiction over action brought by United States to
2 reduce tax assessments to judgment and foreclose tax liens under 25 U.S.C. § 7402 and
3 28 U.S.C. §§ 1340 and 1345).

4 Separately, it appears that Defendants misunderstand the Tax Court’s holding.
5 The Tax Court has jurisdiction to review notices of deficiency and notices determination
6 under 26 U.S.C. §§ 6212 and 6213(a), and 26 U.S.C. §§ 6320 and 6330. In order for the
7 Tax Court to have jurisdiction to review a notice of deficiency, the taxpayer must file a
8 petition in Tax Court within ninety days after the notice of deficiency is mailed or 150
9 days if the notice is addressed to an individual outside the United States. 26 U.S.C. §
10 6213(a). Similarly, in order for the Tax Court to review notices of determination, the
11 taxpayer must file a timely petition for review within thirty days after the issuance of the
12 notice of determination. *See* 26 U.S.C. §§ 6330(d)(1), 6320(c). Here, the Tax Court
13 concluded that it lacked jurisdiction because “no notice of deficiency and no notice of
14 determination was issued to [Mr. Buckardt] for tax years 2000 through and including
15 2015 that would permit [Mr. Buckardt] to invoke the Court’s jurisdiction.” Dkt. # 12-1 at
16 2. However, the statutes governing Tax Court jurisdiction (26 U.S.C. §§ 6213(a),
17 6320(d)(1), and 6330(c)), do not impact federal district court jurisdiction. Accordingly,
18 the Tax Court’s determination that it did not have jurisdiction is irrelevant to this Court’s
19 analysis of jurisdiction.

20 **B. Factual Disputes Regarding Notices of Deficiency or Determination**
21 **Are Disingenuous and Misplaced**

22 Defendants next argue that because the Tax Court previously held that there were
23 “NO statutory notices of deficiency and NO statutory notices of determination” filed
24 against Defendants for tax years 2000 through 2015, the IRS cannot assert any liens or
25 levies against defendants. Dkt. # 12 at 2 (emphasis in original). This argument is flawed
26 for two reasons.

27 First, Defendants misstate the Tax Court’s order. The Tax Court did not conclude

1 that the IRS never filed a notice of deficiency or notice of determination against
2 Defendants. Instead, the Tax Court concluded that there were no notices of deficiency or
3 determination filed that were sufficient to confer jurisdiction. Dkt. # 12-1 at 2 (emphasis
4 added).

5 Second, to the extent that Defendants are arguing that the Government's
6 Complaint fails to state a claim under Fed. R Civ. P. 12(b)(6), that argument also fails.
7 Defendants are correct that a taxpayer can challenge the validity of a tax lien by
8 challenging the validity of a notice of deficiency for assessments based on a notice a
9 deficiency. Here, however, the Court finds that the Government's Complaint alleges
10 sufficient facts to suggest that the IRS tax assessments were valid, and that Defendants
11 received timely notices of deficiency and determination for those tax periods in which
12 notice was required. Dkt. # 1 at ¶¶ 20, 28-30. This is further supported by the fact that
13 Mr. Buckardt filed several petitions in Tax Court contesting the IRS' notices of
14 deficiency and determination. *See* Dkt. # 18-2, Exs. 16, 19-21, 24, Dkt. # 18-1, Ex. B.
15 As a result, Defendants' argument that the IRS cannot assert any "liens or levies" against
16 them because no statutes of deficiency or determination were ever filed against them is
17 both unfounded and disingenuous.

18 **C. 26 U.S.C. §7608(a) Does Not Preclude Federal Jurisdiction**

19 Finally, Defendants appear to argue that the IRS cannot enforce laws regulating
20 income taxes under 26 U.S.C. §7608(a), a statute governing IRS examination and
21 inspection, because Subtitle A of §7608 only applies to laws regulating liquor, tobacco,
22 firearms, or commodities taxes under Subtitle E. Dkt. # 12 at 1. Defendants do not
23 explain, however, and the Court cannot decipher how 26 U.S.C. §7608(a) impacts federal
24 court jurisdiction over this action. As explained above, this Court has jurisdiction over
25 this action under 28 U.S.C. §§ 1340 and 1345, and 26 U.S.C. §§ 7402 and 7403. Section
26 7608(a), which regulates the IRS' ability to perform inspections and examinations into
27 taxpayer liabilities, has no bearing on this Court's jurisdiction.

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Dated this 31st day of October, 2019.

The Honorable Richard A. Jones
United States District Judge